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SECRETARIAT
OF
THE ODISHA LEGISLATIVE ASSEMBLY
NOTIFICATION

The 27th March, 2023

No.2345/L.A.— The following Bill, which has been introduced in the Odisha Legislative Assembly on the 27th March, 2023 is here with published under rule-68 of the Rules of Procedure and Conduct of Business in the Odisha Legislative Assembly for general information

THE ODISHA APARTMENT (OWNERSHIP AND MANAGEMENT) BILL,
2023
A
BILL

A BILL TO CONSOLIDATE THE LAW RELATING TO OWNERSHIP OF
AN INDIVIDUAL APARTMENT IN A BUILDING WITH AN
UNDIVIDED INTEREST IN THE COMMON AREAS
AND FACILITIES AND TO PROVIDE FOR
BETTER MANAGEMENT OF SUCH
APARTMENT AND FOR MATTERS
CONNECTED THEREWITH
OR INCIDENTAL THERETO.

Be it enacted by the Legislature of the State of Odisha in the Seventy-Fourth Year of the Republic of India, as follows:

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Odisha Apartment (Ownership and Management) Bill, 2023.

(2) It extends to the whole of the State of Odisha.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

Applicability.

2. (1) The provisions of this Act shall apply to all apartments or buildings converted into apartments irrespective of whether their construction made before or after the date of commencement of this Act on a free hold land or on a lease hold land, if the lease for such land is for a period of thirty years or more including the sub-lease.

(2) All apartments used or proposed to be used for residence, office, practice of any profession or for carrying on any occupation, trade or business or for any other type of independent use shall be governed by the provisions of this Act.

(3) The provisions of this Act shall not apply to a building used for the purpose of holding office or otherwise of a Department of Government or of a Government undertaking or where the building is owned and used by the owner by himself or for letting it out to others.

Definitions.

3. In this Act, unless the context otherwise requires, –

(a) “allottee” in relation to an apartment, means the person to whom an apartment has been allotted, sold or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise, but does not include a person to whom such apartment is given on rent ;

(b) “apartment” means a part of any property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or any part or parts thereof, in a building intended to be used for residence or office or for the practice of any profession or for carrying on any occupation, trade or business or for any other type of use ancillary to the purpose so specified;

(c) “apartment number” means the number, letter or combination thereof designating the apartment in the declaration;

(d) “apartment owner” means the person or persons owning an apartment and an undivided interest in the common area and facilities appurtenant to

such apartment and shall include a promoter in respect of the apartments which have not been allotted, sold or otherwise transferred;

(e)“association of allottees” in relation to apartment means an association of allottees formed or deemed to have been formed under section 15 consisting of all the allottees of the project acting as a group in accordance with the provision made in bye-laws for association of allottees;

(f)“appellate authority” means the appellate authority appointed under section 25;

(g)“building” means a building constructed on any land containing two or more apartments or two or more buildings in any area designated as a block, pocket or otherwise, each containing two or more apartments in all such buildings;

(h)“bye-laws” means by-laws made by the association of allottees in accordance with the provisions of this Act and the rules;

(i)“common areas and facilities” mean—

(i) the entire land of the project or where the project is developed in phases, the entire land for that phase as approved by the Odisha Real Estate Regulatory Authority constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016;

16 of 2016.

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use.

(vii) all community and commercial facilities as provided in the project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

(ix) rain water harvesting structures, solid waste management, composting pits, and plantation such other uses as may be notified by the State Government, from time to time;

(j) "common expenses" means –

(i) expenses declared as common expenses by the provisions of this Act or by declaration or by the bye-laws;

(ii) all sums assessed against the apartment owner by the association of allottees or by the Competent Authority;

(iii) expenses of administration, maintenance, repair or replacement of the common areas and facilities; and

(iv) expenses agreed upon as common expenses by the association of allottees;

(k) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of common expenses;

(l) "Competent Authority" means Competent Authority appointed under section 23;

(m) "declaration" means the declaration submitted under section 9;

(n) "deed of transfer of apartment" means a "deed of transfer of apartment" executed by the promoter or transferor in the manner as may be prescribed;

(o) "Local Authority" means the municipal corporation or municipality or panchayats or any other local body constituted under any law for the time being in force;

(p) "Occupancy Certificate" means the Occupancy Certificate, or such other certificate by whatever name called, issued by the Local Authority permitting occupation of any building, as provided under relevant laws, for the time being in force;

(q) "person" includes a company a firm and a joint family and also any association of persons, whether incorporated or not;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "project" means the development of a building consisting of apartments or converting an existing building or a part thereof into apartments, or the development of land into apartment for the purpose of selling all or some of the said apartments and includes the common areas and facilities, the

development works, all improvement and structures thereon and all easement, rights and appurtenances belonging thereto;

(t) “promoter” means —

(i) a person, who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments and where the person who construct or convert is different from the person who owns the property, the term shall include both of them;

(ii) any Development Authority or any other public body in respect of allottees of,—

(a) apartments constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) any co-operative housing society which constructs apartments for its members or in respect of the allottees of such apartments; or

(iii) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the apartment is constructed; and

(iv) such other person who constructs any apartment for sale to the general public.

(v) “rules” means the rules made under this Act by the Government.

CHAPTER II

OWNERSHIP, HERITABILITY AND TRANSFERABILITY OF APARTMENTS

4. (1) Every person to whom any apartment is allotted, sold or otherwise transferred by the Promoter, whether before or after commencement of this Act, shall, subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of his apartment, and be entitled to such undivided interest in the common areas and facilities as may be specified in the deed of transfer of apartment and such undivided interest shall be computed by taking, as a basis, the built up area of the apartment in relation to the built-up areas of all the apartments in the building:

Provided that in case of mixed use project where a building or an apartment has been allotted, sold or otherwise transferred for non-residential

Apartment to
be heritable
and
transferable.

use, the undivided interest in the common areas and facilities of such non-residential building shall be such as may be prescribed.

(2) An apartment together with its undivided interest in common areas and facilities appurtenant to such apartment shall be heritable and transferable immovable property within the meaning of any law for the time being in force and accordingly an apartment owner may transfer his apartment and undivided interest in the common area and facilities appurtenant to such apartment by way of sale, mortgage, lease, gift, exchange or in any other manner what so ever in the same manner, to the same extent and subject to the same rights, privileges, obligations, liabilities, investigations, legal proceedings, remedies and to penalty, forfeiture and punishment as any other immovable property or may make a bequest of the same under the laws applicable to the transfer and succession of immovable property:

Provided that no apartment and undivided interest in common areas and facilities appurtenant to such apartment shall be partitioned or sub-divided for any purpose whatsoever and any covenant to the contrary shall be void.

Compliance
with the
covenants
and bye-laws.

5. Each allottee or apartment owner, as the case may be, shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the Deed of Transfer of Apartment and failure to comply with any of them shall be a ground for action to recover sums due for damages, or for injunctive relief, or both, by the association of allottees, or in a proper case, by an aggrieved apartment owner.

Encumbrances
against
apartments.

6. (1) The owner of each apartment may create any encumbrance, only against the apartment owned by him and the undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and to the same extent as may be created in relation to any other separate parcel of property subject to individual ownership:

Provided that where any such encumbrance is created, the apartment in relation to which such encumbrance has been created shall not be partitioned or sub-divided.

(2) No labour performed or material furnished with the consent, or at the request, of an apartment owner or his agent or his contractor or sub-contractor, shall be the basis for a charge or any encumbrance under the

provisions of the Transfer of Property Act, 1882, against the apartment or property of any other apartment owner not expressly consenting to, or requesting, the same, except that such express consent shall be deemed to be given by the other apartment owner in case of emergency repairs thereto.

(3) The labour performed and material furnished for the common areas and facilities, if duly authorized by the association of allottees in accordance with the provisions of this Act, or the bye-laws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for a charge or encumbrance under the Act aforesaid against each of the apartments and shall be subject to the provisions of sub-section (4).

(4) In the event of a charge or any encumbrance against two or more apartments becoming effective, the apartment owners of the separate apartments may remove their apartments and the undivided interest in the common areas and facilities appurtenant to such apartments from the charge or encumbrance on payment of the fractional or proportional amounts attributable to each of the apartments affected and on such payment, the apartment and the undivided interest in the common areas and facilities appurtenant thereto shall be free of the charge or encumbrance so removed:

Provided that such partial payment shall not prevent the person having a charge or any of the encumbrances from proceeding to enforce the rights, in relation to the amount not so paid, against any other apartment and the undivided interest in the common areas and facilities appurtenant to such apartment.

(5) On any such payment, discharge or other satisfaction, referred to in sub-section (4), the apartment and the undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the charge or encumbrances, so paid, satisfied or discharged.

Ownership
of additional
built-up
area.

7. Any benefit of additional built-up area relevant to the apartment due to change in Development Control Norms or any other reason as the case may be, shall be passed on to the association of allottees.

Execution
of deed of
transfer:

8. (1) The deed of transfer of apartment, shall be executed by the promoter in the name of the allottee or transferee along with undivided proportionate title in the common areas to the association of allottees, in such manner and with

such particulars as may be prescribed, within three months from the date of issue of Occupancy Certificate and shall be registered under the provisions of the Registration Act, 1908:

16 of 1908

Provided that where any allotment, sale or otherwise transfer of any apartment is made by the promoter to the allottee or transferee in respect of project completed before the commencement of this Act and after the commencement of the Real Estate (Regulation and Development) Act, 2016 but no deed of transfer in respect of the common areas and facilities, has been executed, the promoter shall, within six months from the date of commencement of this Act, execute a separate deed of transfer in favour of association of allottees in consonance with the provisions of this Act and rules and the Real Estate (Regulation and Development) Act, 2016.

16 of 2016

16 of 2016

(2) While registering the deed of transfer as mentioned in sub-section (1), the promoter shall attach following documents, namely:—

- (i) Occupancy Certificate;
- (ii) Odisha RERA registration Certificate, wherever applicable;
- (iii) registration of Apartment Owners or Allottees Association Certificate / if any;
- (iv) registered declaration and amendment thereto, if any;
- (v) Such other documents as may be prescribed.

(3) The deed of transfer of apartment referred to in sub-section(1) shall contain such particulars as may be prescribed.

(4) The promoter or the transferor (in case of subsequent transfer of apartment by the apartment owner) shall submit deed of transfer along with the required documents in duplicate within fifteen days from the date of their execution to the competent authority, who shall, after satisfying himself as to the correctness of the contents thereof make an endorsement thereon and return the same along with the enclosures to the promoter or the transferor, as the case may be for its registration within fifteen days from the date of return, before the registering officer empowered under the Registration Act, 1908.

16 of 1908.

(5) Every deed of transfer along with documents referred to in the preceding sub-section and every endorsement thereon relating to the transfer of apartment shall be deemed to be a document which is compulsorily registrable under the Registration Act , 1908 and shall be registered by registering officer accordingly. 16 of 1908.

(6) Notwithstanding anything contained in the Registration Act, 1908, the registering officer shall forward a certified copy of the deed of transfer with endorsement made thereon to the Competent Authority to enable him to make necessary entries in the register maintained for the purpose. 16 of 1908

(7) Nothing in sub-section (1) prevent the Apartment owners from enjoying their respective interest in the common areas and facilities.

(8) Association of allottees relating to registration of common areas by transfer deed includes the persons who are owners of the apartments before the date of the commencement of this Act, and the proportionate share of title on the common area transferred in favour of such owners shall be deemed to have been transferred in favour of the association of allottees.

Explanation: For the purpose of sub-section (1) Competent Authority shall mean the Competent Authority as defined under clause(p) of section 2 of the Real Estate (Regulation and Development) Act, 2016. 16 of 2016

(9) No deed of transfer of apartment in favour of allottees shall be executed before registration of the association of allottees as per Section 15.

CHAPTER III DECLARATION

Promoter
to submit
declaration

9.(1) A declaration shall be submitted by the promoter to the Competent Authority in respect of the building, whether constructed before or after the commencement of this Act, within 30 days of issue of Occupancy Certificate, in such form and manner as may be prescribed.

(2) Where the Apartments have already been handed over to the Apartment owners before commencement of this Act, and the promoter of such Apartment is unable to submit the declaration which is beyond his

control, the competent authority shall, after giving opportunities of hearing to the promoter and association of the owners, allow the association of allottees to submit the declaration in such form and in such manner with such particulars as may be prescribed.

(3) The declaration referred to in sub-sections (1) and (2) shall contain the following particulars, namely :—

(i) details of the land including the right, title and interest thereon on which the building is constructed and encumbrances, if any, over such land and whether the land is free hold or lease hold;

(ii) approved plan of the project from the Authority Competent to approve the said plan;

(iii) description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is constructed;

(iv) the apartment number of each apartment, and a statement of its location, its Carpet area, number of rooms, number of bathrooms, number of balconies and sit outs, immediate common area to which it has access, and any other data necessary for its proper identification;

(v) description of the common areas and facilities including number of lifts;

(vi) value of the property of each apartment, and the undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(vii) a statement that the apartment and such undivided interest are not encumbered in any manner whatsoever on the date of the declaration;

(viii) statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(ix) the name of the person to receive service of process together with the details of residence or place of business of such person and

(x) any other particulars in connection with the property as may be prescribed.

(4) On receipt of the declaration under sub-section (1), the Competent Authority shall after scrutiny of the same, make an entry in the register in the manner as may be prescribed.

(5) The declaration may be amended under such circumstances and in such manner as may be prescribed.

CHAPTER IV

RESPONSIBILITY AND OBLIGATION OF PROMOTERS AND APARTMENT OWNERS

Obligation
of
Promoters.

10. (1) It shall be the responsibility of every promoter, —

(a) to handover all original documents related to the project, not limited to all title documents, Lease Certificate (in case of lease property), approved plans, as-is built plans, statutory compliance certificates, insurance documents, encumbrance documents, completed diagram of wiring, complete plumbing layout, equipment purchase documents, annual maintenance charge documents and any other documents related to the project to the association of allottees within thirty days of issue of Occupancy Certificate and the association of owners shall furnish an acknowledgement to that effect who shall furnish a copy of such acknowledgement to the competent authority;

(b) to transfer all unpaid amount collected from the allottees, security deposits, corpus fund, advance collected, if any, along with interest thereon, to the association of allottees within thirty days of issue of Occupancy Certificate; and

(c) to furnish such other information and documents as may be prescribed.

(2) The promoter shall rectify any structural defect or any other defect in workmanship, quality or provision of services or any other obligations without further charge, within a period of five years from handing over of possession to the allottee;

(3) The promoter shall maintain the common area and facilities till the association of allottees is formed in accordance with the condition laid down in Section 15 and shall be entitled to levy proportionate maintenance charge as specified in the declaration.

Rights and
responsibilities
of allottees

11. (1) The rights and responsibilities of the allottees shall be, for the purpose of this Act, rights and responsibilities as assigned to the allottees under the Real Estate (Regulation and Development) Act, 2016 and any other rights and responsibilities specified under this Act.

(2) The undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered without the consent of two third of the apartment owners expressed in an amended declaration duly executed and registered as provided in this Act.

Responsibility
of Apartment
Owners.

12. (1) It shall be the responsibility of every apartment owner, —

- (a) to abide the bye law of the association of allottees;
- (b) to use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners;
- (c) not to use the services areas and the basements in any manner whatsoever, other than those earmarked as parking spaces, which is meant for use by the association of allottees for rendering maintenance services or any other use permitted under the law;
- (d) to maintain the Apartment at his own cost, in good repair and condition and shall not do or suffer to be done anything in or to the Building, or the Apartment, or the staircases, lifts, common passages, corridors, circulation areas, atrium or the compound or any part of the common areas which may be in violation of any laws or rules;
- (e) not to change or alter or make additions to the Apartment;
- (f) to keep the Apartment, its walls and partitions, sewers, drains, pipe and appurtenances thereto or belonging thereto, in good and tenantable condition, repair and maintain the same in a fit and proper condition and ensure that the support, shelter, etc. of the Building is not in any way damaged or jeopardized;
- (g) not to put any sign-board or name-plate, publicity material or advertisement material, etc. on the face or facade of the Building or anywhere on the exterior of the project, buildings therein or common areas;
- (h) not to change the colour scheme of the outer walls or painting of the exterior side of the windows or carry out any change in the exterior elevation or design without the written approval of the association of allottees;
- (i) not to store any hazardous or combustible goods in the Apartment or place any heavy material in the common passages or staircase of the Building;
- (j) not to remove the outer wall and load bearing wall of the Apartment;

(k) to plan and distribute electrical load of his apartment in conformity with the electrical systems installed by the promoter and thereafter the Association of allottees or maintenance agency appointed by association of allottees;

(l) not to do any work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament;

(m) not to add any material structure or excavate any additional basement or cellar; and

(n) not to cause any loss or damages arising out of breach of any of the aforesaid conditions.

(2) The apartment owner shall be responsible for any act of omission or commission by its employees or tenant or employee of the tenant;

(3) No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment.

Liability of unpaid common expenses at the time of transfer of apartment.

13. Upon the sale of an apartment, the purchaser of the apartment shall be held liable for all unpaid common expenses.

CHAPTER V

ASSOCIATION OF ALLOTTEES

Formation of Association of Allottees.

14. (1) There shall be an Association of Allottees for carrying out the provisions of Real Estate (Regulation and Development) Act, 2016 and the provisions of this Act.

16 of 2016

(2) Notwithstanding anything contained in any agreement, deed of transfer or document of any nature, it shall be the joint responsibility of the promoter and allottees to form an Association of Allottees if either 50 % of allottees or 7 allottees, whichever is lower, have been allotted with the apartments in a project.

(3) The promoter shall enable submission of application by allottees for registration of association of allottees to the Competent Authority in the manner as may be prescribed.

(4) There shall be a single Association of Allottees in the Project:

Provided that if the project has mixed occupancy namely residential apartments, commercial units and units reserved for EWS or any other, separate associations may be formed in the manner as may be prescribed;

Provided further that in every such case where separate associations are proposed to be formed the promoter shall delineate clearly the separate common areas and facilities for each of such associations;

Explanation- For the purpose of this sub-section , the expression “EWS” means a person belonging to the Economically Weaker Section of the society with the annual household income as notified by the State Government from time to time.

(5) An association of allottees formed and registered under this Act shall represent all the allottees, or phase of the project, as the case may be, and shall be body corporate by the name under which it is registered having perpetual succession and a common seal and shall discharge its powers and duties and perform functions in accordance with the provisions of this Act, rules and the bye-laws made thereunder.

(6) The allottee irrespective of the number of apartments booked by him or purchased in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked or purchased in its name or booked purchased in the name of its associated entities or related enterprises, shall be considered as one member of the association of allottees and shall have one voting right.

(7) The promoter shall continue to be the member in relation to an apartment not allotted or transferred , till such apartment is allotted or transferred to a person, who shall become the member of the association and on such allotment or transfer, without any further action on his part, be responsible for paying the annual maintainance charges or any other charges decided by the association.

(8) The promoter shall be considered as one member of the association and shall have one voting right irrespective of the number of unsold apartments in its possession and shall cease to be member of the association as and when it is not in possession and has transferred all the apartments in the project.

(9) An allottee shall cease to be a Member of the association if-

(a) the allotment letter issued in his favour is cancelled by the Promoter at any point before the execution of the deed of transfer;

(b) the deed of transfer executed in his favour is terminated or cancelled by the Promoter or transferee as the case may be;

(c) any other ground as may be provided under the Bye-laws of the association of allottees.

Procedure
of
forming the
Association
of Allottees.

15.(1) The application for formation of association of allottees shall, within six months from the date of commencement of this Act, be submitted, to the Competent Authority in such forms and in such manner as may be prescribed for registration of association with the persons who have been allotted, sold or otherwise transferred the apartment, as members:

Provided that any association of apartment owners, whatever named called, which was registered under the previous law or under the Societies Registration Act, 1860 or any other law for the time being in force before commencement of this Act shall be deemed to be the association of allottees for all intent and purposes of this Act and such association of allottees shall bring their bye-laws in consonance with the provisions of the model bye-laws prescribed under this Act, within six months from the date of such commencement.

21 of 1860

(2) On receipt of application under sub-section(1), the Competent Authority, after satisfying himself that the proposed association and its bye-laws is in consonance with provisions of this Act, the Real Estate (Regulation and Development) Act, 2016 and he shall register the association of allottees for the purpose of this Act and issue a registration certificate, within 60 days from the date of receipt of such application.

16 of 2016

Bye-Laws of
the
Association
of Allottees.

16. (1) The association of allottees shall administer the affairs of the apartment and the property appurtenant thereto including the common areas and facilities in accordance with the provisions of this Act and the bye-laws of the association.

(2) No departure from variation of, addition to, or omission from the model bye-law shall be made except with the prior approval of the Competent Authority:

Provided that contain and particulars of the bye-laws of the association of allottees prior to execution of the registered conveyance deed for the apartment shall be such as may be prescribed.

(3) The by-laws framed under sub-section (1) shall provide for the following, among other matters, namely:-

(a) the manner of election of an Executive Committee from among the apartment owners, term of office of the members of the Executive Committee, the number of persons constituting the Executive Committee, the powers and duties of the Executive Committee, method of removal from the Executive Committee, the powers of the Executive Committee to specify the services to be performed the Secretary and other Office-Bearers and specify which of the powers and duties granted under the bye-laws or otherwise may be delegated by the Executive Committee to such officer bearers;

(b) manner of calling meetings of the allottees and the number to constitute a quorum;

(c) election of a President of the Executive Committee who shall preside over the meetings of such Executive Committee and the Association of allottees;

(d) election of a Secretary who shall maintain a minute book wherein all resolutions shall be recorded;

(e) election of a Treasurer who shall keep the financial records and books of accounts and shall be responsible for the audit of accounts;

(f) creation of an Association Fund;

(g) custody of record relating to land of the projects including deed of transfer executed in favour of Association;

(h) maintenance, repair and replacement of the common areas and facilities and payments therefor;

(i) manner of collecting from the apartment owners their share of the common expenses;

(j) engagement and removal of persons employed for the maintenance, repair and replacement of the common areas and facilities;

(k) the method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;

(l) restrictions with regard to the use and maintenance of the apartments and the use of the common areas and facilities, as may be necessary to prevent unreasonable interference in the use of each apartment and of the common areas and facilities by the several apartment owners;

(m) the percentage of the votes required to amend the bye-laws;

(n) to retain certain areas of the building, subject to the approved plan, grant lease for commercial purposes and to utilise the proceeds of such lease as common expenses for maintaining the building and the common areas and facilities and, if any, surplus is left after meeting such expenses, distribute such surplus among the apartment owners as income after obtaining prior approval of the Competent Authority; and

(o) any other matter not inconsistent with the provisions of this Act relating to the audit and accounts and administration of the property and annual and special general meetings, annual reports and the like.

(4) No modification or amendment to the bye-laws shall be valid, unless it is accepted by two third members of the association and with the approval of the competent authority who shall give a time period of one month, to display the modification suggested along with the justification in the Notice Board and in the visible place of the apartment for receipt of objections and suggestions from the apartment owners.

(5) The rights and responsibilities of maintaining the common areas and facilities in the project lies exclusively with the Association of allottees or the agency appointed by the association of allottees, subject to the power of Competent Authority in this regards as mentioned in this section.

(6) The Executive Committee on behalf, or any other person authorised by association of allottees shall have right to access to each apartment, from time to time, during reasonable hours for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible there from, or for making emergency repairs therein to prevent any damage to the common areas and facilities or to another apartment or apartments.

(7) The facilities in common areas, as located within the project, shall have proper signage such as parking spaces and services including but not limited

to electric sub-station, transformer, generator set rooms, underground water tanks, pump rooms, maintenance and service rooms, fire fighting pumps and equipments etc. and other permitted uses as per sanctioned plans.

(8) All charges towards maintenance, security, advance for maintenance, regular maintenance or any other charges as mentioned in the bye- laws shall be collected only in the bank account opened in the name of the Association in a "Schedule Bank".

Explanation.— For the purpose of this clause, the term "schedule bank" means a bank included in the Second Scheduled to the Reserve Bank of India of India Act, 1934.

2 of 1934

Common
expenses
to
be the first
charge.

17. All sums assessed by the association of allottees or the Competent Authority, as the case may be, as the share of the common expenses chargeable in respect of any apartment shall constitute a charge on such apartment and shall have priority over all other charges, if any, on the apartment for payment of Government and municipal dues and taxes and all sums unpaid on first mortgage of the apartment.

Common
profits and
expenses.

18. (1) The common profits of the property shall be distributed among, and the common expenses shall be charged on, the apartment owners equally irrespective of the undivided interest in the common areas facilities.

(2) Where the apartment owner is not in the occupation of the apartment owned by him, the liability to pay the common expenses payable in respect of such apartment shall be joint and several of the apartment owner and the person in occupation of the apartment.

Association to
reduce
the utilities or
supply of
service.

19. (1) If an apartment owner either wilfully violates or evidently threatens to violate the provisions of this Act and the bye-laws, including failure to pay the common expenses, which are payable by him under this Act for a period of more than three months, the general body of the Association of allottees concerned may, after giving notice of not less than seven days to such apartment owner, may pass a resolution to cut off or withhold or in any manner curtail or reduce, any essential supply or service enjoyed by the apartment owner:

Provided that the association of allottees shall not take any action in furtherance of the resolution referred to above unless a certified copy is sent each to the competent authority and to the concerned apartment owner by

registered or speed post and fifteen days expired from the date of its being sent and its copy is displayed at some conspicuous place of the apartment.

Explanation: For removal of doubt, it is hereby clarified that the power to take action under this sub-section shall not prejudice the other rights and remedies of the association of allottees available under this Act or under any other law for the time being in force.

(2) On continuation of default of payment of common expenses for a period of one year, the arrears shall be recovered as arrears of land revenue in the manner provided under the Odisha Public Demands Recovery Act, 1962.

Odisha Act,
1 of 1963

(3) If an apartment owner is aggrieved by an action under sub-section (1), he may prefer an appeal to the Competent Authority within a period of thirty days from the date of the receipt of the copy of the resolution and the competent authority shall, after affording sufficient opportunity to the parties, pass such orders, as he deems fit.

Insurance.

20. (1) Without prejudice to the right of each apartment owner to insure his own apartment for his benefit, the association of allottees shall, if so required, by the by-laws or by a majority of the apartment owners, insure the property against fire, flood, cyclone and such other hazards under such terms and for such accounts as shall be required.

(2) The policy of insurance shall be in the name of the association of allottees as trustee for each of the apartment owner in the percentage specified in the deed of transfer and the premium payable under such policy of insurance shall be included in the common expenses.

Verification
of
Structural
stability
of old
building.

21. (1) Upon completion of thirty years of age of the building, the Secretary as the Trustee of the association of allottees or any other office bearer as may be authorised in writing by the Executive Committee shall get the structural stability tested by a certified and a registered Structural Engineer and if he, on inspection of the apartment, is of the opinion that the said building is,-

(a) safe for continued occupation, he shall give a Certificate to that effect; or

(b) unsafe for continued occupation even after modification or repair is undertaken, he shall declare that the building is unsafe for living and accordingly he shall intimate the Secretary of the association of allottees

simultaneously to the competent authority concerned as well as the Local Authority having jurisdiction over the area within which the said building is situated.

(2) where the building has been declared as safe for continued occupation under clause (a) of sub-section (1), the association of allottees shall, once in every five years, obtain a structural stability certificate from the certified and registered structural stability engineer and if the association of allottees is aggrieved by the opinion of the structural stability engineer communicated under clause (b) of sub-section (1), the secretary of the association of allottees may, within thirty days from receipt of such opinion, prefer an appeal before the competent authority whose decision, subject to further appeal, shall be final.

(3) The provision regarding disposition of property, destruction or damage provided in Section 22 shall, mutatis mutandis, apply where it is required to repair the building or demolish the building under this section.

Disposition of
Property,
destruction or
damage.

22. (1) If within sixty days of the date of damage or destruction of whole, or any part of the property, or within such further time as the Competent Authority may, having regard to the circumstances of the case, allow and the association of allottees does not proceed to repair, reconstruct or rebuild, then in that event,—

(a) the property shall be deemed to be owned in common by the apartment owners;

(b) the undivided interest in the property owned in common which shall appertain to each apartment owner, shall be the percentage of the undivided interest previously owned by such owner in the common areas and facilities;

(c) any encumbrances affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the undivided interest of the apartment owner in the property as provided therein; and

(d) the property shall be subject to partition in a suit filed by any apartment owner, in which event, the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in equal to the percentage of undivided interest of each apartment owner in the property after paying out all the respective shares of the apartment owners to the extent sufficient for the

purpose and all charges on the undivided interest in the property owned by each apartment owner.

(2) In the event of damage caused to any service or utility line of an apartment or of any other sort of damage that may be a cause of concern to other apartment owners or to the association of allottees, the owner of the apartment where such damage is caused shall repair or rectify or replace or make good such event within five days in case of minor repair and within one month in case of major repair.

(3) The magnitude of damage shall be as mutually agreeable between the owners of the apartment and in case of any difference of opinion; the decision of the Executive Committee of the association shall stand final.

(4) The liability of making good the damage lies with the apartment owner where the damage has occurred and if the apartment owner fails to rectify the damage within the time prescribed in sub-section (2), the Executive Committee of the association of allottees shall proceed to rectify the same immediately and the cost of same shall be recovered from the owner of the apartment where the damage had occurred.

CHAPTER VI

COMPETENT AUTHORITY AND APPELLATE AUTHORITY

Competent Authority and its powers and functions.

23.(1) The State Government may, by notification, appoint one or more officers, not below the rank of Deputy Collector, as the Competent Authority to exercise the powers conferred on it and to perform the functions within the local limit as assigned to it under this Act.

(2) The Competent Authority shall have the following powers, namely:—

(a) on a complaint, or suo-motu, call upon any promoter or association of allottees or apartment owner to furnish in writing such information and explanation, and if he considers necessary, hold an inquiry or direct any person to hold an inquiry into the affairs of the project including constitution, working and financial condition of the association of allottees;

(b) at any time, but at reasonable hours, without notice enter into any apartment and property appurtenant thereto in order to satisfy himself as to whether any provision of this Act or the bye-law has been complied or not;

(c) to issue direction and pass orders consistent with provisions of this Act and rules;

(d) to hear appeal preferred under sub-section (2) of Section 21; and

(e) to exercise such powers as may be prescribed.

(3) The Competent Authority shall have the following functions namely:-

(a) register the association of allottees along with bye-laws on receipt of such application from the promoters, allottees or apartment owners, as the case may be;

(b) scrutinize and maintain register of the a declarations as per Section 9 including amendments thereto;

(c) approve the amendment to bye-laws as provided under sub-section (4) of Section 16 ;

(d) ensure compliance by promoter and association of allottees, the provisions of this Act, rules and the bye-laws by issuing suitable direction;

(e) resolve any other dispute which may arise under the provisions of this Act, rules and the bye-laws; and

(f) to perform any other functions as may be prescribed.

(4) The Competent Authority shall, for the purpose of its powers and functions under this Act have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely :—

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents ;

(c) issuing commissions for examination of witness;

(d) any other matter which may be prescribed;

(5) all proceedings before the Competent Authority shall be deemed to be judicial proceedings within the meaning of section 193 and 228 and for the purpose of Sections 196 of the Indian Penal Code, 1860 and the competent

45 of 1860.

authority shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

Functions of
the Association
to be
discharged by
the Competent
Authority:

24. Where more than two-third of the apartment owners suggest in writing in the prescribed manner that the Competent Authority may discharge the functions of the Association of allottees as laid down in this Act and the bye-laws, the Competent Authority with prior approval of the Appellate Authority may discharge the functions of the association of allottees for such period as may be directed by the Appellate Authority:

Provided that every apartment owner, as soon as may be practicable, be intimated by the Competent Authority by registered letter issued to the address of such apartment owner.

Appointment
and powers
of the
Appellate
Authority:

25.(1) The State Government may, by notification, appoint any officer not below the rank of Collector as the appellate authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act.

(2) Any person aggrieved by an order passed or direction issued by the Competent Authority under this Act or the rules or bye-laws, may prefer an appeal, in such form and in such manner and accompanied by such fees, as may be prescribed, before the Appellate Authority, within thirty days from the date of such order or direction, as the case may be, within such further period as may be allowed by the appellate authority on sufficient grounds being shown.

(3) The Appellate Authority may, after giving an opportunity to be heard to the parties, pass such order, as it deems fit, either confirming, modifying or setting aside the order or direction of the competent authority and the order of the Appellate Authority shall be final.

(4) The appeal under this section shall, as far as possible, be disposed of by the Appellate Authority within a period of ninety days from the date of filing and if an appeal is not disposed of within the aforesaid period, the Appellate Authority shall record reasons therefor.

CHAPTER VII

OFFENCES AND PENALTY

Penalty.

26.(1) If any promoter, —

(a) has failed to submit the declaration under section 9 or any amendment thereto; or

(b) has failed to form the association of allottees as per Section 15;

(c) has failed to execute the deed of transfer of apartment under section 8;
or

(d) has handed over the possession of the apartment without obtaining Occupancy Certificate,

he shall, at the instance of the Secretary of the association of allottees or any official duly Authorised by the Executive Committee by the association of allottees or an aggrieved apartment owner or in a proper case the Competent Authority, on conviction, be liable to be punished with fine which may extend to five lakh rupees and a further fine which may extend to two thousand rupees for every day during which such contravention continues after the conviction.

(2) If any promoter, except the offence as provided in sub-section (1), or an association of allottees or an apartment owner contravene any provisions of this Act or rules or any provision of the bye-law or commit breach of any provision of bye-law or of any covenant, condition or restriction set forth in the deed of transfer or declaration or does anything detrimental to the health and safety of public, the Competent Authority may issue, either suomotu or on application from any person affected, a notice to such promoter or association of allottees or an apartment owner to show cause why penalty should not be imposed and if no sufficient cause is shown, the Competent Authority may impose for each contravention or for breach, a penalty which may extend to twenty thousand rupees and further sum which may extend to one thousand rupees for each day till the breach or contravention continues.

(3) The penalty under sub-section (2) may be recovered as an arrear of land revenue in case promoter or association of allottees or an apartment

owner on whom such penalty is imposed fails to pay such penalty within the time as directed by the Competent Authority.

Offences by
company.

27.(1) Where an offence under this Act has been committed by a company, every person who, at the time of the offence was committed, was in charge of or was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this Section,—

(a) “Company” means anybody corporate and includes a firm or other association of individuals; and

(b) “Director” in relation to a firm, means a partner in the firm.

CHAPTER VIII MISCELLANEOUS

Separate
assessment.

28. Notwithstanding anything to the contrary in any law for the time being in force, each apartment of a property (including its percentage of undivided interest in the common areas and facilities appurtenant to such apartment) shall be deemed to be a separate unit for the purpose of assessment of tax on

Land, municipal rate and taxes, and for this purpose, a local authority shall make all suitable rules to carry out the provision of this section.

29. In case of redevelopment, the share of each owner shall be in percentage equal to the percentage of undivided interest of each owner in the property.

Act to be binding on apartment owners, tenants, etc.

30.(1) All promoters, apartment owners, tenants of such owners, employees of owners and tenants, or any other person who may in any manner use property or any part thereof shall be subject to the provisions of this Act and to the declaration and the bye-laws of the association of allottees adopted pursuant to the provisions of this Act.

(2) All agreements, decisions and determinations lawfully made by the association of allottees in accordance with the provisions of this Act, declaration and bye-laws shall be deemed to be binding on all apartment owners.

Competent authority and appellate authority to be public servants..

31. The competent authority and appellate authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

45 of
1860

Protection of action taken in good faith.

32. No suit, prosecution or other legal proceedings shall lie against the Competent Authority or Appellate Authority for anything which is in good faith done or intended to be done under this Act or the rules or the bye-laws made thereunder.

Powers to make rules.

33.(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers they may make rules in respect of all matters expressly required or allowed by this Act to be prescribed.

Power to remove difficulties.

34.(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazettee, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after expiry of two years from the date of commencement of this Act.

(2) Every order made under this Section shall , as soon as may be after it is made, be laid before State Legislature.

Powers to
exempt.

35.If the State Government, is of the opinion that the operation of any provision of this Act causes any undue hardship, it may exempt, by a general or special order, any class of person or areas from the provisions of this Act.

Act to
override other
laws:

36.(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other Authority.

(2) Save as otherwise provided in sub-section (1), the provisions of this Act , shall be in addition to and not in derogation of, any other law for the time being in force.

Removal of
Doubt.

37 (1) For the removal of doubt, it is hereby declared that the provisions of the Transfer of Property Act, 1882, shall in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment as those provisions apply in relation to any immovable property, and the provisions of this Act shall take effect, notwithstanding anything to the contrary contained in any contract.

4 of 1882

Repeal and
saving.

38. (1)The Orissa Apartment Ownership Act, 1982 is hereby repealed;
(2) Notwithstanding such repeal but without prejudice to the application of section 5 of the Odisha General Clauses Act, 1937, anything done or any action taken or any order or notification issued or purported to have been done or taken under or in pursuance of the Act so repealed shall insofar as it is not inconsistent with the provisions of this Act be deemed to have been issued, done or taken under or in pursuance of the corresponding provisions of this Act.

Odisha
Act 1 of
1984.

Odisha Act
1 of 1937.

Statement of Objects and Reasons

The Odisha Apartment Ownership Act, 1982 was enacted with the objective of making provisions for ownership of an individual apartment which came into force on 1st May, 1984 and accordingly Odisha Apartment Ownership Rules, 1992 were framed.

2. In course of administration of the provisions of the said Act, it has been experienced that it suffers from some operational deficiencies relating to appropriate definitions, jurisdiction and powers of the Competent Authority, inadequate safeguard of the interest of apartment owners. Further the implementation of the said Act suffered a setback for limited scope of competent Authority, definition of Apartment, powers and functions of competent Authority not being elaborated for which the said Act was amended by the Odisha Apartment Ownership (Amendment) Act, 2015. Before amending the Rules in accordance with the said amendment Act, the Real Estate (Regulation and Development) Act, 2016 was enacted. Thereafter, the Odisha Apartment Ownership (Amendment) Rules, 2021 was notified to implement the provision of the Odisha Apartment Ownership (Amendment) Act, 2015. But a series of cases have been filed in the Hon'ble High Court of Orissa challenging the notification of the said Rules on the ground of apparent contradictions prevailing between RERA and the said Rules. Since the Act predates the legislation of RERA Act, provisions relating to association of allottees and transfer of common areas of the project in favour of association of allottees are not available in the Act, which has led to the litigation. The registration of the apartments has also been stalled intermittently in the wake of the aforesaid cases. The State Government is also losing revenue as the sale deeds are not getting registered in time. The situation has been prevailing for a long time and there is an immediate need for amendment of the legislation to address the impasse which is impacting innumerable home buyers across the State.

3. It has also become expedient to make provisions for insurance, structural stability testing of more than 30 years old Apartments, provision of Appellate Forum for the aggrieved persons against the orders of Competent Authority and other incidental matters to make provisions of the Act more explicit, progressive and relevant for the contemporary times.

4. Therefore, it is considered expedient and accordingly proposed to bring forth a new legislation instead of going for an exhaustive amendment in the existing Act .

The Bill seeks to achieve the above objectives.

[USHA DEVI]
Member In Charge

DASHARATHI SATAPATHY
OSD-CUM-SECRETARY
ODISHA LEGISLATIVE ASSEMBLY